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Supreme Court, U.S.
FILED

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No._____

OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1997

Stanley Emanuel & Peter Emanuel,
D/B/A Salvation Disposal & Construction
Co., Petitioner

v.

J.M. Container Corp., Respondent

On Petition for a Writ of Certiorari to
the New Hampshire Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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14 pp

QUESTION PRESENTED

Whether the 14th Amendment of the U.S. Constitution, Section 1, which provides for due process of law and equal protection of the laws, precludes the New Hampshire Supreme Court from reversing the Salem District Court's order, granting a new trial, without offering any legal basis or explanation, and without making a finding of and/or identifying or explaining any abuse of discretion.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS AND ORDERS BELOW

The opinions and orders of the N.H. Supreme Court (Appendices A and B) are unreported.

JURISDICTION

The N.H. Supreme Court entered its judgement on December 22, 1997 (Appendix A).

A timely filed motion for rehearing and reconsideration was thereafter denied on January 22, 1998 (Appendix B).

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (a).

CONSTITUTIONAL PROVISION INVOLVED

The U.S. Constitution, 14th Amendment, Sec. 1, provides, in relevant part, that:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

A. Background

In 1992, Stanley and Peter Emanuel D/B/A Salvation Disposal & Construction Co. (Salvation) entered into a lease to run a transfer station in Allenstown, NH owned by J.M. Container Corp. (JMCC). The lease contained a purchase option and included the purchase and sales agreement and financing provisions should the option be exercised. In 1993 Salvation and JMCC jointly purchased an abutting property which Salvation would purchase JMCC's portion, at JMCC's invested amount, should Salvation exercise the purchase option in the 1992 lease. Should Salvation not exercise the purchase option, it would sell its interest in the abutting property to JMCC for one dollar. In 1994 JMCC brought an eviction action against Salvation in the Salem District Court, which it won. JMCC then initiated an action in the Superior Court system which Salvation

counterclaimed. (Upon the granting of the new trial, in the eviction acton, this action was continued pending the outcome of the current action.) Salvation motioned the District Court for a new trial, N.H. RSA 526, which was denied without a hearing, contrary to NH RSA 526 and due process and equal protection provisions of the U.S. Constitution, Amendment 14, Section 1. Approximately one half year later, Salvation made a second attempt at a new trial which the District Court judge, who presided over the original eviction hearing and denied the first attempt at a new trial, considered and held a hearing and took a site view. After considering all the pleadings and evidence before him, he granted a new trial in the fall of 1995. At the pretrial hearing in February of 1996, presided over by a new judge, JMCC requested a Voluntary Nonsuit With Prejudice (VNSWP). The judge scheduled the new trial and said he would consider the VNSWP. The judge then granted the VNSWP on the eve of the new trial. Salvation, in light of the VNSWP, asked the judge to restore possession of the facility to Salvation and reimburse legal fees. The judge declined to do either.

B. N.H. Supreme Court Proceedings

In June of 1996, Salvation appealed to the N.H. Supreme Court, the District Court's granting of the VNSWP without restoring Salvation to its original position prior to being subjected to

nearly two years of litigation by the plaintiff. JMCC cross appealed, claiming the District Court judge, who presided over the original trial and both attempts at a new trial, abused his discretion in granting the new trial. The N.H. Supreme Court accepted the appeals, briefs were filed, and oral arguments were heard on December 2, 1997. The N.H. Supreme Court rendered its December 22, 1997 order (Appendix A). The order reversed the District Court's granting of the new trial, completely devoid of any legal theory or explanation which allowed the court to so rule. The order did not even explain how the N.H. Supreme Court overlooked JMCC's VNSWP to consider the cross appeal, let alone rule favorably upon it.

In its January 2, 1998 motion for rehearing and reconsideration Salvation pointed out to the N.H. Supreme Court that their order did not meet the requirements of New Hampshire case law and violated Salvation's rights. Paragraph 2 of Salvation's motion for rehearing and reconsideration states:

> "This court has repeatedly held that the granting of a new trial will be upheld unless there has been an abuse of discretion. See, e.g., Hodgdon v. Weeks Mem. Hosp., 128 N.H. 366, 368 (1986); Wright v. Clark Equip. Co., 125 N.H. 299, 303 (1984). Despite this extremely high standard, the court in this

case reversed the new trial order without explanation or discussion. This was a highly unusual step."

and Paragraph 16 states:

"In summary, the court has taken the extremely rare step of over-turning a trial court's order granting a new trial, and has done so without even suggesting the basis for its decision. While the defendant recognizes the court's legitimate interest in disposing of cases expeditiously, the parties' ability to protect their rights requires that they be given some notice of the basis for the court's decision..."

Salvation also pointed out to the N.H. Supreme Court, in its Response to Plaintiff's Objection to Motion for Rehearing and Reconsideration, submitted January 20, 1998, that the first new trial motion was denied without a hearing.

The N.H. Supreme Court's January 22,1998 order (Appendix B) denied Salvation's Motion for Rehearing and Reconsideration and thus failed to correct their errors.

REASONS FOR GRANTING THE PETITION

The Salem District Court's original trial order and first attempt at a new trial denial created injustices upon the

defendant. The District Court judge sought to correct these injustices by ordering a new trial. The N.H. Supreme Court's reversal reopened all the wounds healed by the new trial granting as well as inflicted new injustices upon Salvation.

Except in cases where an abuse of discretion is clear from the record, the credibility of the appellate process depends on the N.H. Supreme Court's making requisite findings and offering adequate explanations and legal basis to support its order reversing the order of the trial court. Without such an explanation, the reversal of such an order detracts from the power of the trial court--and the power of the legislature in enacting N.H. RSA ch. 526, the statute that authorizes the trial court to grant a new trial.

The December 22, 1997 court decision reversing the district court order granting a new trial failed to make the requisite finding that there had been any abuse of discretion. Also, the court's December 22, 1997 order lacks any legal foundation, rationale, theory, explanation, and/or basis for the court's decision and position in its reversal of the order granting the new trial. While this may be acceptable in an affirmance, where one can look to the trial court's legal basis for an explanation, it is fundamentally inequitable for the N.H. Supreme Court to reverse a trial court's order without an explanation. In a reversal there is a disagreement with the

trial court's order and therefore one can not look to the trial court's legal reasoning to generate a legal basis for an explanation of the appellate court's actions. Hence, without the appellate court's explanation, the order stands without any legal foundation and as such acts like an edict. And certainly, there is nothing in the reversal which is so obvious that it needs no explanation. Justice is not in the outcome of the court's order, but rather in the legal basis of the order. To deny a party the rationale or legal theory and basis for the court's action is to deny that party justice.

There is no presumption of infallibility in the judicial process. Justices are common people, just like the rest of us, albeit with high degrees of legal training and legally disciplined minds. Justices are servants of the people. In dispensing justice to the people they serve, their duty is to use their legal training to issue orders supported by legal theory in such a fashion that reasonable people can understand. Regardless of whether a party "likes" the order or is benefitted or harmed by the order, the party can see the legal basis and take comfort that justice has been done. Additionally, to deny a party an explanation of the court's action is to functionally deny that party's right to reconsideration or to otherwise question the correctness of the court's actions. To issue orders without legal foundation undermines the

public confidence and jeopardizes the rule of law upon which society depends for the orderly conduct of its activity.

The founding fathers of this country sought to create a system which protected its citizens from the arrogance of unquestioned laws put forth by unreachable sources. It is the duty of this Court to uphold this principle, embodied in the U.S. Constitution, Amendment 14, Section 1, and correct the injustice of the N.H. Supreme Court's December 22, 1997 and January 22, 1998 orders. In so doing, this Court will reinforce the standard and give guidance to courts throughout the land as to the requisite elements of court orders to prevent them from running afoul of the Constitutional requirements necessary to ensure justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 96-417, J.M. Container Corp. v. Salvation Disposal & Construction Company, the court upon December 22, 1997, made the following order:

Having considered the record on appeal, the briefs and oral arguments of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this appeal. On the plaintiff's cross-appeal, the September 19, 1995, district court order granting a new trial is reversed. The defendant's appeal from the March 12, 1996, order on plaintiff's motion for voluntary nonsuit with prejudice is, therefore, moot.

Order granting new trial reversed.

Distribution:

Cynthia L. Fallon, Esquire
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Richard B. Couser, Esquire
Clerk, Salem District Court 94-LT-080
Honorable Bruce R. Larson
Honorable Robert D. Marshall
Donna K. Nadeau, Supreme Court
File

Howard J. Zibel, Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 96-417, J.M. Container Corp. v Salvation Disposal & Construction Company, the court upon January 22, 1998, made the following order:

Defendent's motion for rehearing and reconsideration is denied.

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Clerk, Salem District Court 94-LT-080
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